

APPROVED: MEETING NO. 11-85

ATTEST: *Helen M. Heneghan*

MAYOR AND COUNCIL

ROCKVILLE, MARYLAND

MEETING NO. 5-85

February 4, 1985

The Mayor and Council of Rockville, Maryland, convened in general session in the Council Chamber, Rockville City Hall, Maryland at Vinson Street, Rockville, Maryland, on Monday, February 4, 1985, at 8:00 p.m.

PRESENT

Mayor Viola D. Hovsepian

Councilman Douglas Duncan

Councilman Peter Hartogensis

Councilman John Tyner, II

ABSENT

Councilman Steve Abrams
(Business Obligation)

The Mayor in the Chair.

In attendance: City Manager Larry Blick, City Clerk Helen Heneghan, City Attorney Paul Glasgow.

Re: City Manager's Report

Mr. Blick reported the following:

1. On Friday, flyers explaining the proposed Lenmore Apartment Rehabilitation Project were distributed to homes and apartments in the Lincoln Park neighborhood. Another meeting will be held with the neighborhood Thursday evening, 7:30 at the Lincoln Park Center.
2. The State Highway Administration has let a contract to design the signal at 355 and First Street.
3. The Board of Appeals met on Saturday from 9:00 a.m. to 9:00 p.m. They took the following actions:

*Sylvia's Restaurant in the Southlawn area was found not to be in violation of its special exception grant.

*The Treatment Center's application for the use of Twinbrook Baptist Church will be granted with conditions.

*The Board also approved the use by the Treatment Center of the Hoover Building on Twinbrook Parkway for offices

*Richard Arkin was elected Chairman

4. There is a group of visitors present at the meeting this evening representing the International City Management Association in Washington. This visit is part of their internship program. Present are Kristine Kubo, Nhur Medina, Mary Burkholder, and Dan Nissenbaum.

Councilman Tyner said he was stunned last Monday night by Councilman Duncan's announcement of his abstention from consideration of Planning Area 12. He noted Councilman Dunca's commitment to housing. He said it is most difficult not to have Councilman Duncan's input and it will hamper the process. Councilman Tyner suggested that since Councilman Duncan has disclosed his involvement that he reconsider and join the Mayor and Council on working on Planning Area 12.

Councilman Duncan said his decision was not made easily but made with a good deal of frustration. His company has an interest in a company that has an interest in the zoning decision. He appreciates Councilman Tyner's words but stands by his decision since he feels the integrity of the Mayor and Council must come first.

Councilman Tyner said he appreciates Councilman Duncan's position and said he had been asked by Councilman Abrams to read a statement, copies of which were given to all members of the Council.

Statement by
Councilman Steve Abrams
Monday, February 4, 1985

I want to thank John Tyner for according me the courtesy of reading this statement tonight since business prevents me from being present to read it myself.

My statement regards courtesy and ethics.

Like many of you, I was caught by surprise by Councilman Duncan's statement which preceded our public hearing last Monday evening. More importantly, I was disappointed to learn that several people, including the Mayor, had prior knowledge of the contents of Mr. Duncan's statement which neither they, nor Councilman Duncan, saw fit to share with the other members of the Council.

To the credit of Councilman Tyner and Hartogensis, they chose, as I did, not to make any comment at the hearing. But I believe it is fair to say that all of us believe some comment is appropriate.

Had Councilman Duncan accorded me the courtesy of advising me of his situation in advance, as he did others, I would have said to him privately what I now must state publicly. While I respect his concern for ensuring the highest ethical standard for elected officials, I believe he has an obligation of understanding the reasons which are the foundation of our current ethics law and apply those reasons judgmentally to the facts of his situation.

Mr. Duncan, the interpretation of any law is not as black and white as I am sure you would like it to be. That is especially true in an area as subjective as ethical standards for public officials. Just as with the colors, when you mix black and white together you can get various shades of gray. And use of your gray matter, Mr. Duncan - the exercise of judgment - is exactly what you must do in evaluating the current circumstances.

I am pleased that Councilman Duncan did stay and observe most of the three hearings conducted last Monday. I would strongly urge him to reconsider whether there is a reasonable basis for his abstention on this most vital issue before the Mayor and Council.

Mr. Duncan, there are facts that only you face. But I must confess that from the remarks you have made so far, I, for one, don't see any reason why the citizens of Rockville would be less protected or less well-served if you participated in the Planning Area 12 decision.

You have disclosed to all appropriate authorities who you work for and you have described the relationship between your employer and E.D.E. Unless you have risen so fast in the A.T. & T. hierarchy since you recently joined them, I seriously doubt that you will be forced to make decisions where you would be able to be criticized for trading on inside information unavailable to the public at large. Likewise, I believe all of us on the Council believe you when you show your concern for the highest ethical standards. Speaking for myself, I would have no doubts that you would not use any information or your position for personal gain. On this basis I would urge you to reconsider your decision not to participate. That decision has been and remains to be your decision alone.

But Mayor Hovsepian, you have a decision also. If Councilman Duncan decides to continue his nonparticipation, I think we all need to know whether you will be asking for his resignation from the Council.

I'm sure you would agree that the Planning Area 12 decision is probably the most crucial and difficult decision this Mayor and Council will have to make during this term. The policy implications are far reaching. It has consumed an enormous amount of staff time, Planning Commission deliberation, and effort of the Mayor and Council. Because of the likelihood of a divergence of opinion on the Mayor and Council I would think that you would find it most important that we are whole and have the benefit of 5 members participating, not 4.

My recollection, Mayor Hovsepien is that you called for the resignation of our former Mayor, John Freeland, based on your conclusion that the integrity of the Council requires the Council to be whole on decisions regarding fundamental issues before the City of Rockville. I believe the example you used was whether the former Mayor's absence from participating in some of our Town Center decisions because of his new employment rendered the Mayor and Council less than whole. I believe you questioned whether the public was being short-changed by that non-participation. Your concerns then involved a situation where the fundamental decisions had already been made. In addition, there was strong evidence that, at least on that issue, unanimity existed among the four members of the Council required to make the Town Center decisions.

I ask you now, Mayor Hovsepien, how you are going to respond to the Councilman Duncan's situation. Surely, your "integrity" definition hasn't changed, has it? If Councilman Duncan, for whatever reason, refuses to alter his stance, can you do anything honorable other than demand his resignation? The rest of us on the Council and the Citizens of Rockville have a right to know. Please tell us.

Councilman Duncan said if Councilman Abrams is requesting a resignation, Councilman Duncan will be happy to entertain it. He has said he has set his ethical standards and he finds Councilman Abrams statement ludicrous and troubling on such an issue. It is Councilman Duncan's feeling that his participation would damage the integrity of the Mayor and Council.

Mayor Hovsepien said that Councilman Abrams has indicated that she would be less than honorable if she did not ask for Councilman Duncan's resignation. She wishes Councilman Duncan could participate because his abstention means the City loses but she can understand the circumstances that led to this. Councilman Abrams' letter confuses my two tatements. It was my first statement that focused on the integrity of the Council in the sense of wholeness. May second statement indicated a perception of conflict of interest and this was the basis for my asking the former Mayor to consider resignation.

Mayor Hovsepien said at this time she would like to recognize that the appointees to the City's Boards and Commissions give valuable service to the government, to the Mayor and Council and to the citizens. She would particularly like to note the service of the Planning Commission which schedules more meetings than the Mayor and Council. She would like to commend them for their service and she would like them to know the Mayor and Council do appreciate their efforts.

Re: Citizen's Forum

The Mayor opened the meeting to those citizens who wished to address the Mayor and Council.

1. Mary Donna Osmond, Leahy Drive. Mrs. Osmond said renovations are now taking place at the Twinbrook Shopping Center and it would seem the owners are duplicating stores that exist across the street. There is a need for new types of business. She asked if the City or the Chamber of Commerce can intervene so that there will not be businesses mirrored on both sides of the street.

Mrs. Osmond said six months ago the Mayor and Council promised the citizens some efforts on the ethics ordinance. Both Councilman Duncan and Mayor Hovsepien said a full Council was needed in order to make decisions on important subjects. At this time Councilman Duncan will be giving part-time, part-time service. The Mayor and Council should approve a code of ethics for Rockville. At the sametime the Mayor and Council should be careful to weigh carefully what it creates or someday it will be forced to obey it.

Councilman Duncan said the proposed ethics ordinance speaks to employment problems and he hopes to have an ordinance adopted very soon. When it is adopted he plans to submit his present situation to the ethics commission.

Councilman Tyner said ethics work sessions have been scheduled several times but more pressing matters caused postponements.

2. Regina McAndrews. Mrs. McAndrews said she is not surprised at Councilman Abrams' statement and that he should find fault with Councilman Duncan's high ethical standards. Councilman Duncan's abstention will force other Councilmembers to get off the fence. It is her hope that Councilman Tyner's interest in housing is shown in his vote on the Housing Policy when it comes before the Mayor and Council.

There being no other citizen wishing to address the Mayor and Council the Mayor closed the citizens forum portion of the meeting.

Re: Appointments

Mayor Hovsepien made the following appointments, they were confirmed by the Mayor and Council:

Economic Development Council: William Roberge, Jr. - Chairman - 1 year term

Human Rights Commission: Sandy McDonald - four year term
800 Princeton Place

Retirement Board: Eric F. Waldt (FOP) - two year term
J. Richard Salen (alternate FOP) - two year term

Montgomery County Cable TV Representative: Roald Schrack

Re: Approval of funding
for stadium lights at
Wootton High School

This item is deferred. Councilman Tyner noted that the Mayor and Council are awaiting a School Board response before proceeding with this item but there has been no change in the Mayor and Council's intention to fund the project.

Re: Work Session:
Cultural Arts
Commission

The Mayor and Council conducted a work session with members of the Cultural Arts Commission. Present from the Cultural Art Commission are Chairman Keith Fisher and members Ellie Chamberlain, Eileen Mader, John Moser, Anne Reiss and

Marilyn Scott. The work session was held with the Cultural Arts Commission in an effort to define the role of the Commission. The Commission is an advisory body which passes on its recommendations to the Mayor and Council. The City Manager explained to the Commission the operation of the City's ordinance for 1% of the cost of Construction for artwork for public buildings and the CIP programming of \$1 per capita since confusion existed as to how these funds could be spent. The City Manager and Councilman Tyner agreed to attend the Cultural Arts Commission meeting on Wednesday evening to further discuss the matters that were begun this evening and eventually bring together a policy for operations that the Council could review for a consensus.

The Mayor and Council thanked the Commission for their service to the citizens.

Re: Introduction of
Ordinance: To revise
and amend
appropriations
Ordinance FY 85

On motion of Councilman Duncan, there was introduced upon the table an ordinance revising and amending the appropriations ordinance for FY 85, said ordinance to lay over at least one week before final action is taken.

Re: Award of Contract:
Bid No. 51-85,
Sandblasting at Water
Treatment Plant

Invitation for Bid No. 51-85 was issued for the purpose of the Sandblasting and Painting of a Clarifier at the City Water Treatment Plant. The solicitation was sent to twenty companies.

Bids were opened at 3:00 p.m. on December 17, 1984. Four bids were received:

<u>Company</u>	<u>Total Bid</u>
Tito Contractors, Washington, D.C.	\$21,000.00
National Painting & Contractors, Inc., Baltimore	\$39,000.00
Kuehnle-Wilson, Baltimore, Maryland	\$39,650.00
Roy O. Leonard, Framingham, Massachusetts	\$53,425.00

The budgeted amount was \$25,000.

The Water Treatment Plant Supervisor has confirmed that Tito Contractors has experience in the field for approximately five years and has satisfactorily completed a minimum number of jobs confirming the company's ability to complete this requirement for the City.

It is hereby recommended that award be made to Tito Contractors in the amount of \$21,000.00

On motion of Councilman Hartogensis, duly seconded and passed by unanimous vote of all present, Bid No. 51-85 was awarded to Tito Contractors in the amount of \$21,000.00.

Re: Award of Contract:
Bid No. 48-85, Water
Meters

An Invitation for Bid No. 48-85 was issued to several independent distributors of the Rockwell Sentry Brand Plastic Water Meters in order to obtain pricing on a competitive basis.

Bids were opened on December 18, 1984, and only one bid was received:

Rockwell International: \$20.00 per Water Meter

As a result of receiving a bid only from the manufacturer, it was confirmed that Rockwell International is the only source for direct purchase of the "Sentry" brand.

The Contract Officer investigated the possibility of using a WSSC contract for meters. Inasmuch as WSSC awarded a contract of "Badger" brand meters, it was not possible to use the contract. "Badger" brand has a higher "fogging"

failure rate than Rockwell. The City requires a lower failure rate due to having less maintenance personnel than WSSC.

The bid of \$20.00 per Meter is considered fair and reasonable. The City has previously obtained the meters directly from Rockwell International at a cost of \$22.00 per meter. The current price is 9% less.

In addition, WSSC received a bid from Rockwell International for the above-referenced contract in the amount of \$17.00 per meter. WSSC's requirement for a quantity of 3,000 meters reflects the difference in price.

Rockwell International has satisfactorily completed contracts with the City in the past.

Based on the above-referenced information, it is recommended that award be made to Rockwell International for 1,000 Sentry Brand Plastic Water Meters in the total amount of \$20,000.00.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, Bid No. 48-85 was awarded to Rockwell International in the amount of \$20,000.00.

Re: Adoption of
Ordinance: To amend
Section 1-103 of Chapter
17 of the "Laws of
Rockville", entitled
"Grading, Erosion and
Sediment Control", to
clarify the requirement
that the Chapter applies
to all activity which
requires a building permit
whether or not land
disturbing activity is
involved.

Ordinance No. 2-85

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, Ordinance No. 2-85, the full text of which can be found in Ordinance Book No. 12 of the Mayor and Council clarifying the requirements of

Chapter 17 was adopted by the Mayor and Council.

Re: Decision and
Instructions to staff re
Text Amendment
Application, T-63-84, J.A.
Lynott, Jr., Attorney for
Jamil M. Azat, to alter
non-conforming status for
an existing restaurant in
the Town Center Planning
Area.

(Councilman Hartogensis abstained from discussion of this item.)

The subject Text Amendment has been filed for the purpose of adding a limited "grandfather clause" to the Zoning Ordinance so that an existing free-standing restaurant (Paisano's) in the TCO-1 Zone will not be regarded as a nonconforming use or a development nonconformity. This clause will only allow such use, if damaged or destroyed, to be rebuilt, repaired or reconstructed only to the extent of the original floor area. A second amendment provides for required parking in the event the restaurant should be reestablished as per the grandfather clause.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present and voting, the staff was instructed to prepare the necessary legal documentation to deny Text Amendment Application T-63-84.

Re: Decision and
Instructions to staff re
Text Amendment
Application, T-64-84,
Clinton A.M.E. Zion
Church, applicant, to add
a new subsection so as to
allow a church or other
place of worship in a
residential zone to
provide parking on a
separate lot from the
facility served.

The subject Text Amendment would add a new subsection to the Parking, Loading and Access Requirements (Section 3-401) so as to allow a church or other

place of worship to provide parking on a separate lot from the facility served.

Councilman Tyner suggested this be brought back to the Council making such application a special exception so that each application would require a public hearing. He said he realizes staff has suggested the use permit process but he would prefer a public hearing.

Councilman Tyner moved that this be made a special exception process. The motion was seconded by Councilman Hartogensis.

Councilman Hartogensis suggested that using the hundred foot limitation might be better so that parking would be allowed within the 100 feet but anything over that could be a special exception. He suggested the motion be amended to include this. Councilman Tyner refused the amendment to his motion.

Mayor Hovsepian called for a vote. Councilman Tyner's motion was defeated, only Councilman Tyner voting for it and all others voting nay.

Councilman Hartogensis moved that the Mayor and Council instruct the staff to draw up the necessary legal documentation to allow that parking within a hundred feet on a separate lot be allowed with a use permit and from 100 to 500 feet be accomplished by special exception. The motion carried with only Councilman Tyner voting in the negative.

Re: Decision and
Instructions to staff re
Map Amendment Application,
M-40-84, J.A. Lynott, Jr.,
Attorney for Marriott
Corporation, Applicant,
requesting the rezoning of
a five acre parcel of land
at the southeast corner of
Shady Grove Road and
Research Boulevard from
the present I-2, Light
Industrial Zone, to the I-3
Industrial Park Zone

The subject Map Amendment Application requests zoning reclassification for a five acre parcel of land at the southeast corner of Shady Grove Road and

Research Boulevard from I-2, Light Industrial Zone, to I-3, Industrial Park Zone. The subject application covers a five acre portion of Parcel B, Block B, Washington National Pike Industrial Park. The Marriott Corporation has contracted to purchase five acres of the sixteen acre Rickman parcel for the purpose of constructing one of its new "Courtyard" motels.

On motion of Councilman Tyner, duly seconded and passed by unanimous vote of all present, the staff was instructed to prepare the necessary legal documentation to grant Map Amendment Application, M-40-84.

Re: Decision and Instructions to staff re Text Amendment Application, T-65-84, J. A. Lynott, Jr., Applicant, to extend the special development standards for certain lots in the I-3 zone to additional property

The subject Text Amendment would extend the special development standards contained in Section 3-303(b) to cover additional property.

Section 3-303(b) is in the nature of a "grandfather clause" which allows smaller lot sizes and reduced setbacks for certain properties in the I-3 Industrial park Zone. The special provisions are applicable only to I-3 lots which were in another industrial zone at the time of subdivision. Furthermore, the subdivision (record plat) must have been approved by the Planning Commission prior to January 31, 1975. In practice, Section 3-303(b) applies only to lots in the Washington National Pike Industrial Park located along Research Boulevard at Shady Grove Road.

On motion of Councilman Hartogensis, duly seconded and passed by unanimous vote of all present, the staff was instructed to prepare the necessary legal documentation to grant Text Amendment Application, T-65-84.

Re: Cable Television
Cable Programming
Amendments

Mayor Hovsepien suggested that the Mayor and Council act on the recommendation from the staff concerning a revised plan for cable television programming. It calls for cutback in cable television coverage for the remainder of FY 85 until such time as the revenue figures are made clear.

The amendments are as follows:

- 1.) Discontinue production of the daily "City Hall Report" series but continue brief Mayor and Council Agenda Previews and Reviews.
2. Discontinue gavel to gavel taping of Mayor and Council meetings but tape some representative video from each meeting to go with "Review" program.
3. Produce at least five features (one per month) on selected City programs or services that are undated and can be used repeatedly (i.e. Swim Center promos, building permit requirements, Refuse Collection).
4. Produce one to two special programs per month on selected City events such as Memorial Day Parade and Rockville Day.
5. Continue daily updating of the Character Generated information.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, the cable television programming amendments were approved by the Mayor and Council.

Re: Approval of Minutes

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, the Minutes of Meeting No. 45-84, December 14, 1984, were approved as amended.

Re: Correspondence

1. G. S. Leighton, re thank you
2. A. R. Bullard, re Rockville Scholarship foundation
3. J. Clinton Wells, re traffic problem
4. Charles W. Calhoun, re Twinbrook Safeway

5. R. J. Shekletski, MCPS Area 2, re boundary shifts
6. Lee Iacocca, re Statue of Liberty foundation
7. Maryland DOT, re transportation matters
8. G. E. Wilson, re Lenmore Section 8 housing

Mayor Hovsepian asked that the same response be sent as had been sent to the Summerour letter. Councilman Hartogensis asked if everyone is familiar with the Thursday Mayor and Council meeting at the Lincoln Community Center to discuss the Lenmore Apartments.

9. Farid Srour, compliments to staff
10. Letters re Treatment Center Permit Parking

Councilman Hartogensis said some letters were addressed to him individually and he has responded to those. Mayor Hovsepian asked that the staff prepare a letter indicating that where these letters request a reconsideration that the Mayor and Council action was a result of a reconsideration.

11. Stepping Stones, thank you letter
12. Arts and Entertainment Network, re programming
13. Resignations from Human Rights Commission
14. Montgomery County, re acknowledgment of letter re MXPZ zoning

Re: Information

1. Memo re College Gardens Pond
2. Information on repairs at the Lincoln Center
3. Letter to Director of Planning from Montgomery County re Historic Designation
4. Letters concerning Hollady/Tyler
5. Response to citizen complaint
6. Memo re tree request at 1304 Princeton Place
7. Memo re GRS Self-Evaluation
8. Copy of letter re historic resources survey
9. Copy of letter to MML Montgomery Co. Chapter re cable television
10. Tax Assessment information for Fireside Apartments
11. Copy of letter to County Executive re Tillie Frank legislation

12. Information on Lone Oak Park Lease

Councilman Duncan asked the City Manager if these dates were realistic. The City Manager said they are.

13. Memo re Water Plant Supervisor

14. Letter to citizens in Twinbrook re petition for one-way street designation

15. Letter to MML Montgomery County Chapter re Tillie Frank legislation

16. Memo from City Attorney re Woodmont Country Club v. City re assessment

17. Summary of ACSC Activities

18. Memo from Planning Commission re Proposed Housing Policy

Councilman Tyner asked that a work session on the proposed Housing Policy be scheduled soon.

19. Copy of letter-Montrose Civic Assn. to Montgomery County re transportation changes

20. Memo re Cable Television programming (moved to Agenda)

Re: New Business

1. Councilman Duncan asked when the championship teams from the local schools will be coming to a Mayor and Council meeting along with the merit finalists. Mr. Hobbs said the Education Commission is working on this and that the Merit Finalists list is not out yet. Councilman Duncan asked that the sports teams come and then wait for another time for Merit Finalist. Mr. Hobbs said this will be done.

2. Councilman Tyner suggested the Mayor and Council address the Council's representation on the COG Committees. Councilman Tyner said he would continue on Air Quality and Energy. Councilman Hartogensis would prefer to represent the City on Public Safety. Councilman Tyner will be the alternate to the Board of Directors. Mayor Hovsepian suggested that the City Manager look into a representative from the Housing Authority. The Council asked that a copy of the appointment letter be forwarded to them when it is written.

Re: Adjournment

There being no further business to come before the Mayor and Council in general session the meeting was adjourned at 10:50 p.m. to convene again in general session on Monday, February 11, 1985, at 8:00 p.m. or at the call of the Mayor.